



November 1, 2001

National Marine Fisheries Service
Office of Protected Resources
Permits Division (F/PR1)
1315 East-West Highway
Room 13705
Silver Spring, MD 20910

RE: Docket No. 001031304-0304-01

Dear Madam/Sir:

On behalf of Sea Life Park Hawaii, I am submitting comments on the National Marine Fisheries Service's (NMFS) proposed rule amending public display requirements under the Marine Mammal Protection Act (MMPA), which are intended to implement the amendments to the MMPA enacted in 1994.

Sea Life Park Hawaii objects strongly to the proposed rules. They are inconsistent with, and contradict, the 1994 amendments to the MMPA. They resurrect many of the same sweeping and costly proposals NMFS proposed in 1993, which Congress rejected in 1994.

Care and Maintenance Standards

In the 1994 Amendments, Congress decided it was wasteful for two agencies to have identical responsibilities for enforcing care and maintenance standards for marine mammals. Therefore, Congress determined that the Animal and Plant Health Inspection Service (APHIS) would have sole authority over the care and maintenance of animals at public display facilities. Nevertheless, the Proposed Regulations resurrect the rejected 1993 approach by giving NMFS joint responsibility to enforce APHIS' care and maintenance standards.

Compounding the problem of having two agencies enforcing the same regulations, the Proposed Regulations state that "any person" designated by NMFS will also have the right to examine any marine mammal held for public display, to inspect any public display facility, and to review and copy all records."

We object strongly to NMFS' efforts to again establish duplicative inspection authority.

Export of Marine Mammals

The Proposed Regulations does not defer to APHIS' comparability review of non-U.S. facilities and bide by APHIS decision **as** to whether the facility should receive **an** exported marine mammal. The Proposed Regulations require that NMFS independently determine that the facility complies with APHIS' care and maintenance standards. In addition, these NMFS rules continue to insist on letters of "comity" **as** a condition of export.

We strongly object to all efforts by NMFS to apply the MMPA internationally, be it letters of "comity" or inventory requirements. These proposals not only raise very serious international relations issues, but they also raise serious questions about whether NMFS should be **using** its limited resources to transform itself into an international regulatory agency.

The Removal of Marine Mammals from the Wild

We support the existing regulations, finalized in 1994 after the passage of the 1994 amendments to the MMPA. These amendments require a permit applicant to demonstrate that any taking "by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock ..."

We strongly object to the proposed regulations in this section. A public display facility could undertake extensive, expensive, and time-consuming research to gather and analyze population level information and to evaluate every other direct or indirect take or source of mortality yet never meet the agency's threshold of proof. Even the Endangered Species Act does not have a take provision **as** stringent **as** that which NMFS is attempting to insert into the MMPA.

Transfer, Reporting and Other Requirements

The 1994 Amendments provide that a person issued a permit to take or import marine mammals for public display shall have the right "without obtaining any additional permit or authorization" to sell, transport, transfer, etc. the marine **mammal** to persons who meet the MMPA requirements. The MMPA also provides that a person exercising these permit rights must notify the Secretary of Commerce no later than 15 days before any sale, transport, etc. However, **in** the Proposed Regulations, this simple 15-day notification has been transformed into the submission of three transport notifications for the same transaction and three Marine Mammal Data Sheet forms restating the information already in the inventory.

Moreover, the Proposed Regulations require that before a transport can occur, both the holder and the receiver must provide NMFS with a certification that the receiver meets the three requirements for holding a marine mammal. However, the Proposed Regulations make persons subject to civil or criminal penalties for submitting false information should NMFS judge that the receiving facility is not in full compliance with APHIS standards. It is not clear why an APHIS determination of compliance with APHIS requirements is not adequate and why the

shipper and receiver must provide an independent certification, particularly when the MMPA says the transfer may occur without further permit or authorization.

We object strongly to the additional requirements NMFS is proposing for the transfer of marine mammals.

Reporting of Stillbirths

It is not necessary that the Proposed Regulations require facilities to report stillbirths since such animals will not become part of the inventory of animals at public display facilities. The issue regarding stillbirths is with respect to genetics and public display facilities already report stillbirths to the persons who maintain these genetic records.

Conclusion

The Alliance of Marine Mammal Parks and Aquariums will be submitting more detailed comments on these Proposed Regulations. We support the Alliance comments.

We hope these comments will be helpful in promulgating a rule that more closely reflects the 1994 amendments to the MMPA.

Sincerely,


George "Paka" Nishimura
Curator

cc: Wayne Nielsen, General Manager